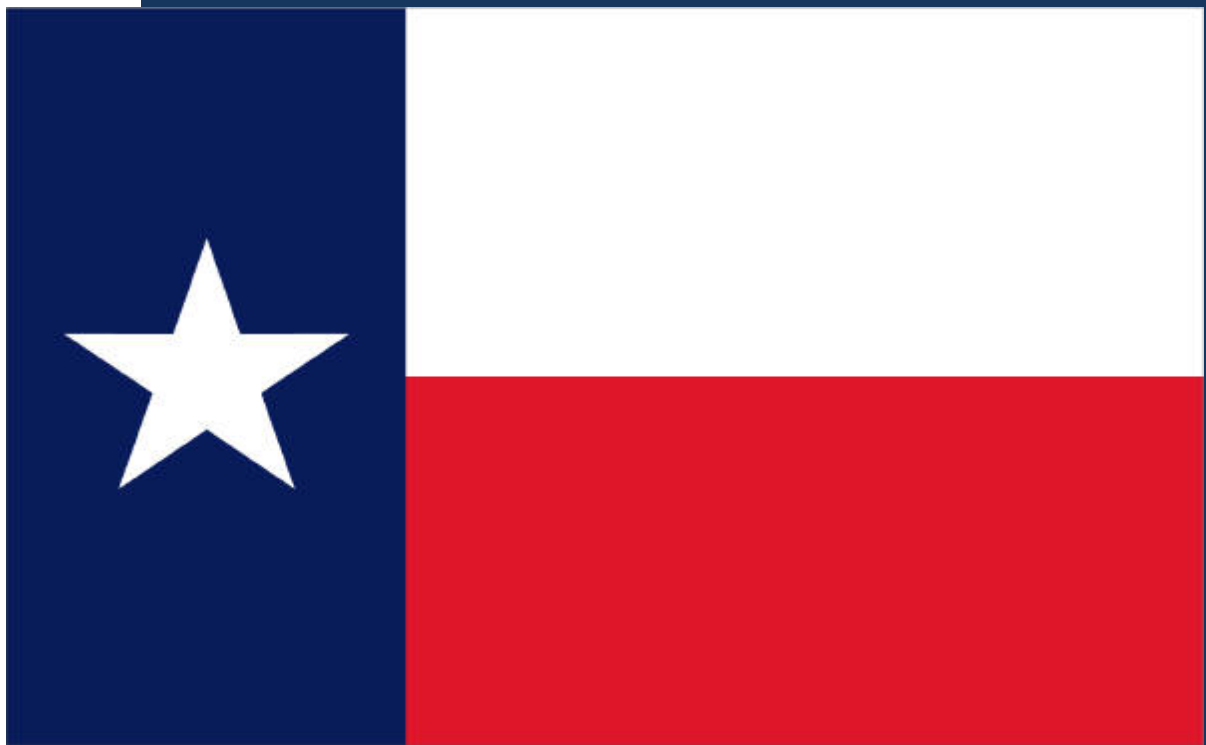


DPS Contract Management Guide



Prepared by
Procurement & Contract Services
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REVISION HISTORY

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1. INTRODUCTION

The Procurement and Contract Services (P&CS) Bureau has developed the DPS Contract Management Guide for all Texas Department of Public Safety (DPS) employees who request goods and services. Due to the changing nature of government procurement, the rules and procedures might change between revisions to this manual. The P&CS staff stays current on all purchasing rules, policies, and regulations and should be your primary source to provide guidance on procurement processes. P&CS coordinates all contracting activities closely with OGC.

The intent of this Guide is to assist you in understanding the processes that must be followed in order to adequately manage contracts.

Any suggestions should be directed to the DPS P&CS at (512) 424.5255 or Procurement@dps.texas.gov.

2. PROCUREMENT & CONTRACT SERVICES ORGANIZATION (P&CS)

The P&CS Bureau is the section within DPS Administration Division – Policy & Planning that is responsible for coordinating and managing all procurement and contracting activities for the agency. P&CS Staff are available to assist DPS staff with procurement and contracting needs.

The P&CS Bureau is responsible for facilitating the procurement and contracting needs for all DPS locations and for all types of purchases. P&CS efforts are focused on the purchasing and contracting activities which obtain the best value for the agency.

The Mission of the P&CS Bureau is to have highly-trained, professional staff that approve, record, and process purchases of goods and services for the Agency, at the right time, at the right price, consistent with law, regulations, internal policy, and sound business judgment.

3. STATE AND AGENCY ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES

All DPS employees and officials who participate in the state procurement and contracting activities shall adhere to DPS ethical standards. Violation of these standards is subject to discipline, up to and including termination.

All DPS personnel involved in procurement or contract management must disclose to the agency any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services.

State officials and employees are responsible for protecting the safety and welfare of the public's monies. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, they must avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for state purchasing and contract manager personnel who are charged with the disposition of state funds.

State personnel must adhere to the highest level of professionalism in performing their official duties. Employees of agencies who perform purchasing functions are required ([34 Texas Administrative Code §20.41](#)) to adhere to the same ethical standards required of the Comptroller of Public Accounts ([CPA](#)) employees. The following paragraph is an excerpt from the [CPA's](#) State of Texas [Procurement Manual](#) Section 1.2 regarding ethics for personnel involved in purchasing:

“State officials and state employees are entrusted with the safety and welfare of the citizens of Texas. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business. The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.”

All DPS employees must adhere to the ethics policies as set forth in the DPS General Manual. The process of purchasing in a government setting requires that all participants strictly adhere to the rules, codes, and statutes put in place by the State of Texas. There are also DPS rules that must be strictly followed. No deviation from any of these policies and standards is permitted.

DPS staff members are prohibited under [TEX. GOV'T CODE § 572.051](#) and [TEX. GOV'T CODE § 2155.003](#) from having an interest in or receiving benefits from a contract or bid for a purchase of goods or services. Perception plays a key role in maintaining the highest level of integrity which includes avoidance of the appearance of impropriety. Employees who participate in any part of the procurement and contract processes are subject to a higher standard of ethics. Employees must adhere to the State's Ethics Policy which states,

“It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.”

Under [TEX. GOV'T CODE § 2261.251](#), DPS may not enter into a contract with a vendor if any of the following agency employees or officials has a financial interest:

- A member of the agency's governing body;
- The Governing Official, Executive Director, General Counsel, Chief Procurement Officer or Procurement Director of the Agency;
- A family member related to an employee or official described above within the second degree by affinity or consanguinity;
- Having a “financial interest” in this section is defined as a state agency employee or official that:
- Owns or controls, directly or indirectly, a least 1% in the person, including the right to share in profits, proceeds or capital gains or;

- Could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

Under [TEX. GOV'T CODE § 572.069](#), state officers and employees who participated in a procurement or contract negotiation are prevented from accepting employment with the vendor for 2 years after the officer's or employee's service or employment with the agency have ceased.

3.2. REQUIRED FORMS

All DPS personnel involved in procurement or contract management activities must disclose to the agency any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services. A Conflict of Interest Form (PPP-7) must be signed by any employee who participates in the development of specifications, solicitation documents, evaluation, negotiation, or contract monitoring activities. A violation of this provision is subject to discipline, up to and including termination. Contract Monitors will be required to sign a Conflict of Interest form upon being assigned to a contract or Major Purchase Order. P&CS Staff will be required to sign a Conflict of Interest form on an annual basis, and are also responsible to report immediately to their management if they identify a potential Conflict of Interest at any time during the year.

Under [TEX. GOV'T CODE § 2262.004](#), officers or employees involved in the specification development or an award determination must sign a Nepotism Disclosure Form (PPP-9) before a state agency may award a major contract for the purchase of goods or services to a business entity. Each DPS staff member working on the contract must disclose in writing to the Director any relationship that the DPS employee has with an employee, a partner, a major stockholder, a paid consultant with the prospective vendor or business entity for contracts valued more than \$25,000; or other owner of the business entity that is within a degree described by Section [TEX. GOV'T CODE § 573.002](#).

[TEX. GOV'T CODE § 2252.908](#) prohibits agencies from entering into contracts over \$1 million or contracts that require action by the governing body before the contract may be signed with a business entity unless the business entity submits a disclosure of interested parties to the agency at the time the business entity submits the signed contract. Before fully executing a contract valued at \$1 million or more, DPS must obtain a copy of the Disclosure of Interested Parties Form (PPP-10) from the proposed business entity (vendor) to be submitted with the contract for review by the CRB. The P&CS Director will submit the PPP-10 to the Texas Ethics Commission within 30 days of receipt of the disclosure.

4. STATE PURCHASING STATUTE AND RULES

The Texas Comptroller of Public Accounts (CPA) identifies a list of governing statute and rules that state purchasing programs must follow: <http://window.state.tx.us/procurement/procedures.html> All contracts involving procurements must adhere to these rules and the State Procurement Manual, which is also available on the CPA website.

5. REQUESTS THAT REQUIRE OVERSIGHT BY PUBLIC SAFETY COMMISSION

The Public Safety Commission (PSC) established the Contract Review Board (CRB) in order to provide them with more visibility into the major agreements the agency enters into.

5.1. CONTRACT REVIEW BOARD

Proposed contracts, agreements or purchase orders meeting the criteria set by the Public Safety Commission must be reviewed prior to execution. The PSC established the CRB to fulfill this oversight need. The CRB reviews significant procurements and contracts to help ensure efficiency, effectiveness, and best practices. Procurements meeting any of the following requirements must be reviewed by the CRB:

- New contracts valued at \$1 million or more, including all available renewal options;
- Contract amendments (excluding available, previously-reviewed renewal options) valued at \$100,000 or more that increase the value of the original contracts by 50% or more; or
- Contract amendments (excluding available, previously-reviewed renewal options) valued at \$500,000 or more.

5.2. EXECUTIVE CONTRACT REVIEW BOARD

The Executive Contract Review Board (ECRB) reviews the Department's proposed procurements and contracts with an estimated value of \$500,000 or more; any modifications to contracts with an estimated value of \$500,000 or more; and any staff augmentation services procurement requests, regardless of contract value. ECRB approval occurs prior to the item being routed to P&CS to be processed.

6. SIGNATURE AUTHORITY & APPROVALS

An authorized employee's signature on a contract will reflect a representation that the contract has been properly submitted, reviewed and approved in accordance with all Department policies and procedures, and that the contract is in the best interest of the state.

Consult the General Manual for more detailed information on these requirements.

The following individuals are authorized to sign contracts on behalf of the Department:

- Director;
- Deputy Director, Law Enforcement Operations, for contracts with a total estimated value of less than \$1 million; and
- Deputy Director, Homeland Security and Services, for contracts with a total estimated value of less than \$1 million.

No other employee may sign a contract binding the agency without a delegation of authority to do so as set out in this policy. All contracts that require signatures or otherwise bind the agency must be reviewed by P&CS in the Administration Division and the Office of General Counsel (OGC).

7. CONTRACTS REQUIRING ENHANCED MONITORING

[TEX. GOV'T CODE § 2155.0755](#) requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit to the agency governing body. The P&CS Director shall immediately notify the Agency's governing body, through the Assistant Director of Administration, of any serious issue or risk that is identified with respect to a contract monitored under this section.

Under [TEX. GOV'T CODE §2261.254](#), on August 27, 2015, the PSC delegated to Steven C. McCraw, Director of the Department, the authority to approve contracts that exceed a value of \$1 Million. See also above provisions regarding the CRB and its review of \$1 Million plus contracts and other high risk transactions.

Under administrative rules approved by the PSC and now published in the Texas Register for comment under [TEX. GOV'T CODE §2261.253](#), all procurements and contracts that meet the threshold of review by the CRB or the Executive Committee of the CRB will be considered to require enhanced contract or performance monitoring and those monitoring reports will be submitted to the PSC by the Assistant Director of Administration. Any member of the CRB or the Procurement Director may recommend that there is a serious issue or risk with any contract that needs to be immediately brought forward to the PSC through the Assistant Director of Administration.

7.1. ENHANCED GUIDANCE FOR CONTRACTS OVER \$1 MILLION

Under [TEX. GOV'T CODE § 2261.254](#), for all contracts over \$1 million, the agency shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules;
- Corrective action plans required under the contract and the status of those plans;
- Any liquidated damages assessed or collected under the contract.

The Agency shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

All contracts over \$1M must be presented to the CRB before the contract may be signed. Prior to entering into contracts over \$1million with a final signature, the business entity must submit a Disclosure of

Interested Parties Form (PPP-10) to the agency at the time the business entity submits the signed contract. The disclosure form will be created by the Texas Ethics Commission.

DPS must provide 10 business days' notice to the Legislative Budget Board (LBB) before payment can be made on any contract that is over \$1 million that was awarded outside of the competitive process. This notice will include a certification, in the form prescribed by the LBB, from the Director of DPS that the purchase complied with the contract management guide, procurement manual, applicable statutes or the alternative process used and the name of the person directing that process.

7.2. ENHANCED GUIDANCE FOR CONTRACTS OVER \$5 MILLION

Under [TEX. GOV'T CODE 2261.255](#), for all contracts over \$5M, the Director of Procurement and Contract Services must verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy and submit information to the CRB on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

7.3. ENHANCED GUIDANCE FOR CONTRACTS OVER \$10 MILLION

Under [TEX. GOV'T CODE 2262.101](#), all solicitations expected to result in contracts valued at \$10M and greater must be submitted to the Contract Advisory Team for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

DPS must provide 10 business days' notice to the LBB before payment can be made on any contract that is over \$10M. This notice will include a certification, in the form prescribed by the LBB, from the Director of DPS that the purchase complies with the contract management guide, procurement manual, applicable statutes or what alternative process was used and the name of the person directing that process.

8. CONTRACT MANAGEMENT

Contract Management refers to the entire contracting process, which involves planning, forming, and administering contracts through closeout. DPS will also adhere to the DPS Procurement Guide in executing the contract management and monitoring processes. Contract management activities include administering and monitoring the contract after the award and during contract implementation by measuring completed work, computing and approving payments, monitoring contract performance, supervising the contract connection, addressing linked issues, incorporating necessary changes and modifications to the contract, and actively interacting with the Contractor to achieve the contract objectives. In addition to it being a requirement that DPS adhere to the State Contract Management Guide adopted by the Contract Advisory Team, the DPS Contract Monitoring Program was developed to standardize an agency-wide methodology for managing contracts.

8.1. DPS CONTRACT MONITORING PROGRAM

Each purchase order and contract will have a designated Contract Monitor from the requesting division, a P&CS Contract Administrator, and an Executive Sponsor (the AD of the requesting Division) to assist in the contract management process.

The Contract Monitoring Program also hosts quarterly internal contract advisory team (iCAT) meetings which provide a forum for Contract Monitors to share ideas and recommend changes to for continuous improvement of the contract monitoring processes through discussion, lessons, learned, and collaboration.

8.2. DPS MAJOR CONTRACTS

All contracts, regardless of the dollar amount, are formally monitored. A contract is written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. An original Contract, Amendment, Modification, Extension, Purchase Order (PO), Interagency Agreement, Interlocal Agreement, Intercooperative Contract, and a Memorandum of Understanding are all considered contracts.

All POs are also to be formally monitored, but only those considered to be Major POs require the Contract Monitor Questionnaire reporting and are included in the Contract Library.

A Major POs is defined as follows:

- A POs with a “High” or “Important” risk classification;
- The total value of the POs including optional renewals, is \$1 million or more;
- A POs for Staff Augmentation Services; or
- The POs is based on a Time and Materials fee and payment structure.

8.3. CONTRACT MANAGEMENT ROLES

Per TEX. GOV'T CODE § 2261.256, each state agency must develop and comply with a purchasing accountability and a risk analysis procedure that provides for establishing clear levels of purchasing accountability and staff responsibilities related to purchasing and contract monitoring. Provided below is a high-level description of key differences between the Contract Monitor and the Contract Administrator.

8.3.1. CONTRACT MONITOR

A Contract Monitor must be assigned to every PO or contract. The Contract Monitor is responsible for the continual monitoring and day-to-day management of the contract's performance to ensure its compliance with terms and conditions as well as the forecasting and planning for contract renewals, changes, and close-

outs. The Contract Monitor must understand the procurement timelines associated with renewals, solicitations, and transitions and ensure that those actions are initiated and planned by the division so as to start and finish within constraints.

DPS Contract Monitors are individuals within the Division responsible for the day-to-day oversight of the contract and the Contractor. Contract Monitors are:

- Appointed by the requesting Division's Assistant Director
- Full time employees, and not contract employees
- Required to attend Contract Monitor Training offered by the agency before being listed as such on a contract or Major PO
- Expected to monitor the contract for the life of the contract
- Required to review vendor performance and report the review to P&CS who will report to CPA at the termination of a contract
- Responsible for their contract monitoring duties and may not delegate their duties to any other personnel
- An individual that has read and understood the DPS Procurement & Contract Management Guide

Contract Monitors are identified through the information on the Requisition. Changes in Contract Monitor for a contract must be formally requested by the Contract Monitor's Assistant Director to PPPRequests.

Contract Monitor Responsibilities Include:

- Continual monitoring and day-to-day management of the contract's performance to ensure its compliance with terms and conditions as well as the forecasting and planning for contract renewals, changes, and close-outs
- Understand the procurement timelines associated with renewals, solicitations, and transitions and ensure that those actions are initiated and planned by the division so as to start and finish within constraints
- Understand the requirements, provisions, and deliverables of the purchasing documents
- Serve as the point of contact for disseminating the instructions regarding the work to the contractor/vendor
- Communicate, track, and escalate (as needed) work to be performed by Agency staff that impacts contract performance
- Receive and respond to communications between the agency, stakeholder divisions, and the contractor once the contract is in place

- Meet with the contractor and stakeholder divisions on a regular basis to review progress, discuss problems and consider necessary changes
- Verify accuracy of invoices and authorize payments consistent with the contract terms (Receiving Reports / Receipts)
- Track that contract requirements are satisfied and that the goods and services are delivered in a timely manner and within the conditions specified in the contract
- Monitor the contractor's progress and performance to ensure goods and services conform to the contract requirements
- Monitor the budgeting/accounting process to ensure sufficient funds are available
- Monitor and document contractor activity on a specified frequency to identify problem areas
- Facilitate and Coordinate with P&CS and Stakeholder divisions to identify any requested or needed changes to the contract or requesting work orders under the contract and then work through P&CS to implement them
- Coordinate with P&CS and Stakeholder divisions to document vendor performance
- Coordinate with Stakeholder divisions to plan, evaluate, and approve work for contracts that span multiple divisions
- Work with P&CS to provide information necessary for proper contract close-out
- Supply Contract Monitor Questionnaire and Expenditure reports per defined frequency
- Supply Vendor Performance Reports per defined frequency in the DPS Procurement Guide, including at the completion of a contract per Texas Government Code 2155.089
- Conduct Risk Assessments as needed on active contracts and with P&CS upon award
- Keep detailed and thorough documentation of communication with vendors and progress reports of contract performance
- Read the entire contract - The written contract defines both parties' obligations and responsibilities
- Always follow what is in the written contract
- Ensure compliance with the purchasing and contract documents - Monitor to ensure avoidance of Non-Compliance
- Document all contract related communication
- Measure, monitor, and track performance
- Report on progress
- Ensure completion of work
- Maintain accurate and detailed records in the contract working file
- Verify the accuracy of invoices before payment is approved
- Identify inconsistencies between planned and actual performance
- Document and follow up on all corrective actions

- Monitor and enforce contract terms and conditions and report any contract disputes immediately
- Conduct business in a professional manner
- Watch out for Fraud from vendors:
 - Unauthorized substitutions
 - Delayed services (false progress reports)
 - Work performed by uncertified individuals or by lower-rate personnel but charging for higher-rate personnel
 - Cancelling the required insurance policies after award
 - False work requirements to increase volume
 - Proposing development work that has been performed on other contracts
 - Allowing contractors to serve as informal contract monitors or to influence changes to existing or future solicitations as that crosses over to consulting services
 - Double billing
 - Shortages – not delivering 100%
 - Providing foreign-made where domestic ones are required (Made in America)
- Watch out for Fraud by other employees:
 - Altering receiving documents
 - Accepting substitute items or services that are not authorized in contract
 - Signing off on services not received
 - Requesting services that are not needed
 - Approving false or inflated invoices
 - Nepotism
 - Allowing contractors to serve as informal contract monitors or to influence changes to existing or future solicitations as that crosses over to consulting services
 - Financial interest in a company resulting in potential personal gain to a DPS resource associated with the contract or decision-making process
- Educate contractors – Remind them of TXDPS' "No gift" policy
- Avoid the perception of impropriety
- Avoid personal actions or investments in business that may be perceived as a conflict of interest
- Document and report to the Contract Specialist / Procurement Lead
 - Discrepancies between test and inspection results and contract claims and specifications
 - Charges for fees, equipment rental, or travel are not adequately supported
 - Failure to have adequately supporting documentation for reports and summary data
 - Inadequate or apparently altered, missing, or incomplete supporting documentation or test results

- Contractor's claims or statements are unreasonable when compared to prior history or industry standards
- Delays or refusal to allow inspections
- High rate of test or operational failures
- Actual progress is inconsistent with site inspection report
- Contractor is slow (or nonpayment of) supplies, employees, or the government
- Contractor's progress payment claims do not appear to coincide with the contractor's plan to perform the contract
- Invoice with no physical address for vendor
- Undocumented and/or unapproved adjustments, credits, and write-offs
- Invoices for services /goods not rendered
- Multiple remittance addresses for the same vendor
- Payments to vendor have increased dramatically for no apparent reason
- Duplicate invoices
- Higher-than-usual costs or expenses on invoice
- Inconsistent invoicing time periods
- Does not communicate with the Vendor in regards to upcoming or active solicitations
- Does not accept gifts from Vendors
- Does not agree to changes in the contract without written authorization from P&CS
- Does not negotiate with the vendor without going through P&CS
- Does not authorize work outside of the current, approved version of the contract
- Does not fail to include stakeholder divisions in, requirements, tracking and reporting performance, or planning deliverables
- Immediately report to the P&CS Director, DAD of Policy & Planning, and AD of Administration any of the following:
 - Conflict of Interest
 - Potential Conflict of Interest
 - Fraud
 - Potential fraud
 - Any incident that is an ethical problem
 - Any incident that may lead to ethical questions
 - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies

8.3.2. CONTRACT ADMINISTRATOR

DPS Contract Administrators are P&CS personnel responsible for facilitating the procurement and contract management processes to ensure compliance with the state laws, policies, and guidelines. Contract Administration involves the administrative activities associated with handling contracts. The role of Contract Administrator is to complete the acquisition cycle, oversee the management of the contract, ensure the customer needs are satisfied, and confirm the Contractor is fully compensated for services or supplies rendered per the contract terms and conditions. Contract Administrators must receive formal training and are required to be certified by the State of Texas.

Contract Administrator Responsibilities Include:

- Provide guidance and support to the Contract Monitor
- Facilitate / Coordinate escalations between internal stakeholders
- Determine Solicitation and Procurement Method
- Facilitate the procurement process and adhere to all State purchasing rules, policies, and laws as well as DPS purchasing policies and procedures
- Lead Evaluations
- Lead Negotiations
- Communicate Awards with the Vendor
- Communicate with Vendor during planned or active solicitations
- Provide oversight to ensure that the State of Texas Contract Management best practices are adhered to and are able to survive an external audit
- Work with Contract Monitors to address changes and issues Validate scope and terms of contract against requested work orders, changes, performance reporting, etc.
- Administer, approve, and document any changes to the contract identified by the CM; Process Modifications, Amendments, and Change Orders are not authorized unless formally issued to the vendor through P&CS
- Facilitate resolving disputes with contractor in a timely manner
- Facilitate exercising state remedies, as appropriate, when a contractor's performance is deficient
- Aid division in developing plans for new solicitations and/or renewals, modifications, and changes
- Ensure the Contracts Library is up – to –date
- Collect, review and store the Contract Management Questionnaire and Vendor Performances
- Provide monthly progress reports to Administration Management and Division ADs on contracts identified as high risk or having performance issues
- Provide guidance on contract formation and pricing
- Maintain appropriate and required records in the official contract file

- Report to Contract Monitor and Stakeholder divisions on status of contract or contract administration activity related approvals
- Ensure compliance with posting requirements
- Facilitate compliance with all procurement rules and policies
- Perform contract closeout process ensuring the contract file contains all necessary contract documentation, ensuring formal acceptance is documented, and documenting lessons learned
- Conduct Risk Assessments and assign Risk level to new requisitions and with Contract Monitor at award
- Ensure the required reviews and approvals are conducted and obtained prior to solicitation, award, and/or prior to executing changes or amendments
- Immediately report to the P&CS Director any issues or risks to a contract or Major PO
- Immediately report to the P&CS Director, DAD of Policy & Planning, and AD of Administration any of the following:
 - Conflict of Interest
 - Potential Conflict of Interest
 - Fraud
 - Potential fraud
 - Any incident that is an ethical problem
 - Any incident that may lead to ethical questions
 - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies

8.3.3. OFFICE OF GENERAL COUNSEL (OGC)

As requested, the OGC provides guidance, direction, and review to assist the agency in ensuring that the contracting and procurement activities are compliant with applicable state laws, policies, and guidelines.

Other OGC Responsibilities include the following as requested:

- Provide guidance and direction through the solicitation, award, monitoring, and closeout processes to help ensure the Agency is protected
- Help to ensure that DPS contracts are monitorable and measurable
- Identify opportunities to improve clarity of responsibility and expectations documented in the contract
- Provide “lessons learned” and “post mortem” feedback to determine where DPS can improve contract language to mitigate agency risk moving forward
- Vet and recommend Executive Director approval on two party contracts
- Provide guidance and direction on dispute resolution

- Identify state remedies, as appropriate, when a vendor's performance is deficient
- Ethics Officer

8.3.4. OTHER CONTRACT STAKEHOLDERS

Finance

- Ensure compliance with prompt payment
- Validate and approving use of funds identified on requisition
- Validate receipts have been completed before issuing payments
- Perform two or three way match before issuing payment
- Immediately report to the P&CS Director, DAD of Policy & Planning, and AD of Administration any of the following:
 - Conflict of Interest
 - Potential Conflict of Interest
 - Fraud
 - Potential fraud
 - Any incident that is an ethical problem
 - Any incident that may lead to ethical questions
 - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies

Other Divisions

- Responsible for evaluating request and determining if they need to contribute or approve specifications
- Responsible for identifying to what extent and how their division will be impacted by the contract
- Responsible for reviewing and approving or disapproving if listed in the approval path, and for providing a reason for disapproval
- Responsible for adhering to all procurement and contracting rules, policies, and procedures
- Responsible for supporting the Contract Monitor and team
- Immediately report to the P&CS Director and DAD of Policy & Planning any of the following:
 - Conflict of Interest
 - Potential Conflict of Interest
 - Fraud
 - Potential fraud
 - Any incident that is an ethical problem
 - Any incident that may lead to ethical questions

- Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies

8.4. CONTRACT CHANGE CONTROL

A key aspect to effective contract management is the ability to manage change and have sufficient oversight to prevent scope creep, unauthorized work from being performed, and over billing. The Contract Monitor, Contract Administrator, and the Executive Sponsor all have a responsibility to ensure all contract are memorialized in the form of a modification, amendment, or change order. Changes not addressed through formal Modification, Amendment or Purchase Order Change Notice is considered Non-Compliant.

Contract Monitors should implement a change control system for major contracts and keep a log of all requested changes. The change control system should account for evaluation of requested changes and approvals/disapprovals of requested changes, and date change was executed if applicable.

All changes must be within scope of original contract. Types of Changes include, Work Orders, Administrative Changes, Substantive Changes, and Constructive Changes.

Changes:

- Must not be addressed verbally and Verbal agreements are NOT binding
- Changes must be addressed in writing and must go through P&CS to be authorized
- May require ECRB and/or CRB
- Are not considered authorized until both parties have signed-off and P&CS has identified the item as being fully executed

8.5. CONTRACT ISSUE MANAGEMENT

The Contract Monitor is the first person to know about and resolve issues. Contract Monitors should keep a log of all issues that arise during the life of the contract and document the timeline of the issue along with the resolution.

To prevent disputes, Contract Monitors will:

- Maintain regular communication with contractor
- Respond promptly to all contractor inquiries regarding contract concerns
- Work with P&CS to develop a strategy to resolve issues and communicate to contractors

- Thoroughly document all issues and communications pertaining to contract issues
- Contract Monitors must notify P&CS promptly of any issues.
- Contract Monitors must use Corrective Action Plans to address issues that are impacting performance of the contract.

8.6. CONTRACT RISK MANAGEMENT

Under [Texas Government Code 2261.256](#), each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

- Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates;
- Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff;
- Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

Performing risk assessments help to determine the level of degree of oversight and participation from the Executive Sponsor. Executive sponsorship participation increases when the risk is higher. The Agency developed a Risk Assessment tool determine the risk level of the contract. Based upon the classification of risk, the contract will require enhanced levels of reporting.

This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the agency. Performing risk assessment is an ongoing process throughout the life of the contract. At DPS, the frequency of which Contract Monitor Questionnaires (contracts monitoring reports) are turned in is based on the risk classification assigned to the contract. The Risk Assessment is conducted at the time the requisition is submitted to P&CS, at the time of award, and throughout the life of the contract as needed based on current circumstances.

Risks to the contract must be reviewed and revaluated by the Contract Monitor on a continual basis until the contract has fully performed and final payment has been rendered. The Contract Monitor Questionnaire is required to provide visibility and support to remedy outstanding issues and risks in order to increase the chances for successful outcomes.

In addition to using the risk assessment tool, Contract Monitors should keep a log for all Major Contracts and Major POs. This log should identify all risks to their contract, the mitigation plan or strategy for addressing the risk, and the outcome. This log should be available for review upon request by P&CS. Current risks must also be reported on the Contract Monitor Questionnaire.

Under Section 2261.253, TEX GOV'T Code, and other provisions of Senate Bill 20 (84th Legislative Session) and General Appropriations Act Art IX, Rider 7.12 adopted by the 84th Legislature, Regular Session, the P&CS Director has responsibilities relative to serious issues or risks on certain contracts. The P&CS Director shall notify the agency's governing body, through the Assistant Director of Administration, of any serious issue or risk on certain contracts. The P&CS Director will also provide a weekly report through the Assistant Director of Administration to the Public Safety Commission that identifies risks or issues with these items.

8.7. CONTRACT DISPUTES

Despite best efforts, there is always the potential for dispute with a contract. Contract Monitors will follow these steps in order to informally address disputes.

1. Identify the problem – many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
2. Research facts – you should obtain all the information regarding the potential problem from all relevant sources.
3. Evaluation – you should review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency should then determine the appropriate course of action.
4. Corrective action – identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a corrective action plan (contract performance is impacted) or less formal written procedure (contract performance could be impacted if not resolved), is essential.
5. Include all information related to the informal dispute in the Contract Monitor Questionnaires until the informal dispute is resolved. Resolution must also be reported in the Contract Monitor Questionnaire.

If disputes are not able to be addressed informally, then notify your assigned Purchaser or Contract Specialist and your management.

6. Email the assigned Purchaser or Contract Specialist, cc division management. The email should contain an overview of problem and actions taken towards resolution to date.
7. P&CS will provide guidance and assistance and escalate to OGC if needed.
8. P&CS will facilitate resolution with all parties, including OGC.
9. P&CS will facilitate completion of an internal Corrective Action Plan and/or require the contractor to provide a formal Corrective Action Plan (CAP).
10. As requested, OGC will provide guidance and direction on appropriate legal action if the vendor is non-compliant.

8.8. CONTRACT REPOSITORY

All Major POs and all Contracts will be stored in the Contracts Library. P&CS is responsible for ensuring the initial contract and Major PO is loaded in the library upon award. Additionally, P&CS is responsible for ensuring that all amendments, modifications, and POCNs are loaded and that all data elements included in the contract library are updated upon change.

Contract Monitors are responsible for checking the library and validating that all information for their contract or Major PO is correct and up-to-date and reporting any discrepancies to Procurement@dps.texas.gov.

8.9. CONTRACT FILES

Procurement & Contract Services will be responsible for maintaining an official contract file for all contracts that include the request, solicitation, responses, scoring, BAFO, award documents, corrective actions, contract monitor reports, and change documents.

Contract Monitor is responsible for maintaining a working file that captures documents pertaining to the contract, issues, changes, risks, expenditures, invoices, payments, and correspondence and being able to provide that file on request by P&CS.

8.10. POSTING CONTRACTS AND CONTRACT DOCUMENTS

DPS will also comply with all procurement and contract posting requirements, including those described by Sections 2157.0685, 2261.253, and 2261.256 of the Texas Government Code. Procurement & Contract Services will be responsible for this compliance.

8.11. CONTRACT MONITOR TOOLKIT

The following documents are considered to be the Contract Monitor Toolkit:

- Contract / Purchasing Documents
- Contract Monitor Questionnaire (PPP-5)
- Contract Monitor Schedule
- Expenditure Report
- Risk Assessment Tool
- Corrective Action Plan
- Vendor Performance Report (PPP-6)
- Change Log
- Risk Log
- Issue Log

Numbered forms are located in the DPS Forms Repository. Additional forms and templates for Contract Monitors are located in the Contract Monitoring Program section of the DPS Procurement & Contracts portal.

8.1. CONTRACT MONITOR REPORTING SCHEDULE

Risk Level	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.
Low – Contracts, Major POs	Due on Sept. 10 th to cover period of previous fiscal year											
Moderate Contracts, Major POs	Due on Sept. 10 th to cover period of March to August						Due on March 10 th to cover period of Sept to Feb					
Important Contracts, Major POs	Due on Sept. 10 th to cover period of June to August			Due on Dec. 10 th to cover period of Sept. to Nov.			Due on March 10 th to cover period of Dec. to Feb.			Due on June. 10 th to cover period of March to May		
High Contracts, Major POs	Due on Sept. 10 th	Due on Oct. 10 th	Due on Nov. 10 th	Due on Dec. 10 th	Due on Jan. 10 th	Due on Feb. 10 th	Due on Mar. 10 th	Due on Apr. 10 th	Due on May 10 th	Due on June 10 th	Due on July. 10 th	Due on Aug. 10 th